

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BRANDON BANKS, et al.,
Plaintiffs,
v.
NISSAN NORTH AMERICA, INC.,
Defendant.

Case No. 11-cv-2022-PJH

ORDER RE NOTICE PROCEDURE

At a case management conference held on February 18, 2016, the parties proposed a procedure by which notice of the amended proposed settlement would be sent only to class members who opted out of the original proposed settlement. The parties explained that such a procedure was employed in a similar case, Klee v. Nissan North America, Inc., 2015 WL 4538426 (C.D. Cal. July 7, 2015). However, because the parties did not cite to Klee in their case management statement, the court did not have an opportunity to review the case prior to the case management conference.

Having now reviewed Klee, the court finds significant differences between Klee and the present case. In Klee, the terms of the original settlement provided that owners of affected vehicles would receive an extension of their warranty, which would cover any repairs or replacements of the battery in their electric cars. Importantly, it appears that class members did not need to submit a claim in order to receive the extended warranty – but rather, the benefit would be extended to all class members unless they opted out.

After preliminary approval was granted in Klee, notice was sent to all class members, and a number of objections were received. In response, the parties requested

1 a stay of the final approval proceedings, so that they could participate in further
2 mediation. As a result of that mediation, the parties reached a modified settlement
3 agreement that would provide additional benefits to the class. Specifically, the modified
4 settlement provided for replacement (not repair) of the vehicles' batteries, and would also
5 provide free access to charging stations where available. Notice of the modified
6 settlement was sent only to class members who opted out of the first proposed
7 settlement, so that they would have an opportunity to opt back in to the modified
8 settlement.

9 This case is a very different situation. As opposed to Klee, this is a "claims made"
10 case, so only class members who submit a valid claim will receive any benefit. As a
11 result, if the court were to send notice only to class members who opted out of the
12 original proposed settlement, all of the class members who neither opted out nor
13 submitted a claim would receive nothing. Contrast that with the situation in Klee, where
14 those silent class members would still receive the benefit of the modified settlement.

15 The court finds it entirely plausible, if not likely, that certain class members who
16 chose not to submit a claim when the expected reimbursement was \$20 would now
17 choose to submit a claim when the expected reimbursement is \$400. And the court sees
18 no reason to deny the previously-silent class members an opportunity to submit a claim,
19 now that the settlement terms have been improved.

20 Accordingly, the court is inclined to require that notice be sent to (1) class
21 members who opted out of the original settlement, (2) class members who objected to
22 the original settlement, and (3) class members who did not respond to the original
23 settlement notice. Notice need not be re-sent to class members who did submit a valid
24 claim, because it is unlikely that a class member who previously submitted a claim would
25 choose to opt out or object to a settlement that would confer a larger benefit. Because
26 this issue has not been fully briefed, the parties will have an opportunity to explain why
27 the court should follow the approach taken in Klee, despite the differences identified
28 above. The parties may file a joint supplemental brief, not to exceed ten (10) pages, no

1 later than **February 29, 2016.**

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3 **IT IS SO ORDERED.**

4 Dated: February 19, 2016



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6 PHYLLIS J. HAMILTON
United States District Judge

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